

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
BIG LOTS, INC., <i>et al.</i> , ¹)	Case No. 24-11967 (JKS)
)	
Debtors.)	(Jointly Administered)

**FOOTHILL LUXURY PLAZA LLC’S OBJECTION TO NOTICE OF (I)
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (II) CURE AMOUNTS (ECF NO. 511)**

COMES NOW, Foothill Luxury Plaza LLC (“**Foothill Luxury**”), a creditor and landlord of the Debtor, and files this Objection to *Notice of Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and Cure Amount* (“**Objection**”),² and, in support thereof, would respectfully show as follows:

BACKGROUND

1. On or about July 2, 2010, Foothill Luxury, as landlord, entered into a certain lease agreement with PNS Stores, Inc., doing business as Big Lots, as tenant (“**Tenant**”) (collectively referred to herein as the “**Lease**”), for the property located at 1000 Pocatello Creek Road, Pocatello, Indiana 83201, and being approximately 37,682 square feet of commercial real estate space for an initial term of 67 months ending on January 31, 2016. Tenant thereafter exercised its option to extend the term of the Lease commencing February 1, 2016 and expiring on January 31,

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores - PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores - CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors’ corporate headquarters is 4900 E. Dublin Granville Road, Columbus, OH 43081.

² ECF 511.

2021, and extended the term again commencing February 1, 2021 and expiring on January 31, 2026. Pursuant to the Lease terms, Gross Rent is paid in equal monthly installments in advance on the first day of each and every month.

2. On September 9, 2024, Big Lots, Inc. and each of its subsidiaries, including Tenant, (“**Big Lots**”) filed a voluntary petition for relief under Chapter 11 of the United States Code. The cases are jointly administered under Case No. 24-11967.

3. On October 16, 2024, Big Lots filed a *Notice of Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and Cure Amounts* (“**Notice**”).³

4. The Notice lists the Lease as an unexpired lease to be potentially assumed and assigned to the successful bidder under this Court’s *Order Approving Bidding Procedures for Sale of Debtors’ Assets and (II) Approving the Stalking Horse Bid Protections* (“**Bidding Procedures**”).⁴

OBJECTION

5. In the Notice, Big Lots has listed the Lease twice and has alternatively scheduled a cure amount for the Lease of (i) \$40,640.00 (the “**Cure Amount**”) and (ii) no cure amount.

6. Foothill Luxury objects to the inconsistency of two separate listings for the cure amount owed under the Lease. The first listing correctly captures the Cure Amount, \$40,640.00, the sum of two monthly installments of the Gross Rent. The second cure listing for the Lease should simply be disregarded.

7. Accordingly, the cure schedule should be revised to reflect the Cure Amount as the current amount owed to Foothill Luxury, by removing the second cure amount listing for \$0.00.

³ ECF 511.

⁴ ECF 612.

8. Foothill Luxury hereby adopts any and all additional arguments made by other landlords in this matter.

9. Prior to the date of any assumption or assignment, and regardless of when those amounts accrue, pursuant to Big Lot's contractual obligations under the Lease, other amounts such as common area maintenance, taxes, insurance, and potentially other amounts, including periodic adjustment of charges, may come due to Foothill Luxury. Any cure amount should include any unpaid amounts which accrue prior to the date of any assumption and assignment, or the Debtors or any assignee must be responsible for payments of these amounts.

10. Foothill Luxury is also entitled to recover its attorneys' fees as part of its "pecuniary loss" under Bankruptcy Code section 365(b)(1)(B) due upon assumption and assignment of the Lease. *See In re Crown Books Corporation*, 269 B.R. 12, 18 (Bankr. D. Del. 2001) (lessor may recover attorney fees as part of cure amount for debtor's assumption of lease only if lease specifically requires their payment). Collin Creek estimates that its attorneys' fees total approximately \$3,500 as of the filing of this objection and attorneys' fees continue to accrue.

11. Any order that is entered establishing a cure amount with respect to the Lease must require the Debtors to (1) pay Foothill Luxury their actual cure amount, (2) comply with all obligations under the Lease pursuant to 11 U.S.C. § 365(b)(3) pending the actual assumption of the Lease, (3) cure any additional defaults that may occur under the Lease between the Date of this Objection and the effective date of any assumption by the Debtors, and (4) ensure that the Debtors or any assignee will be expressly responsible and liable for the payment of any charges that come due under the Lease post-assumption and assignment, but that may relate to a pre-assumption and assignment period. In addition, any purchaser must execute a document in a form acceptable by Foothill Luxury in which it ratifies the Lease and assumes the obligations.

RESERVATION OF RIGHTS

12. Foothill Luxury reserves the right to amend and/or supplement this Objection to assert any additional objections in connection with any proposed showing of adequate assurance of future performance for any purchase if assumed or assigned.

WHEREFORE, PREMISES CONSIDERED, Foothill Luxury respectfully prays this Objection be sustained, the Cure Amount be amended to \$40,640.16, together with any amounts unpaid under the Lease hereafter accrued, and for all other relief to which it may be entitled.

Dated: November 6, 2024
Wilmington, DE

SULLIVAN · HAZELTINE · ALLINSON LLC

/s/ William D. Sullivan

William D. Sullivan (No. 2820)
919 North Market Street, Suite 420
Wilmington, Delaware 19801
Telephone: (302) 428-8191
Facsimile: (302) 428-8195
Email: bsullivan@sha-llc.com

Attorneys for Foothill Luxury Plaza LLC